IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRL.A.No. 31 of 1999()

ST.957/1997 of JUDICIAL .MAGISTRATE OF FIRST CLASS-I, HARIPPAD

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APPELLANT/COMPLAINANT:

RETNAVALLY, OWNER OF KERALA VET ASSOCIATES,
PERETHU MUKKU, RESIDING AT JOY VEEDU,
PUTHIYAVILA MURI, KANDALLOOR VILLAGE.

BY ADVS. SRI.N.HARIDAS
SRI. C.S. MANU

RESPONDENTS/ACCUSED & STATE:

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1. C. ABRAHAM (WRONGLY PRINTED AS C. EBRAHIM IN THE MEMORANDUM OF APPEAL),
RENI BHAVANAM, NADUVILE MURI, SOORANADU VILLAGE,
(OWNER OF RENI AGESNCIES, NEAR KANNAMATHU MARKET).

2. STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

(NAME OF THE FIRST RESPONDENT CORRECTED AS PER ORDER DATED 30.5.2007 IN CRL.M.A.NO.12547 OF 2006)

BY ADVS. SRI.K.P.KYLASANATHA PILLAI
SRI.P.SREEKUMAR -R1
PUBLIC PROSECUTOR SRI. C.K.SURESH - R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 31 OF 1999

Dated this the 30th day of May, 2007

JUDGMENT

This appeal is filed against the judgment in S.T. No. 957 of 1997 on the file of the Judicial First Class Magistrate's Court -I, Harippad. The appellant filed the complaint against the first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act,1881.

2. It was stated in the complaint that there was business transactions between the complainant and the accused and that the accused purchased from the complainant cattle feed worth Rs.87,395.80 as per Bill No.367 dated 12.5.1995 for Rs.42,817.80 and Bill No.397 dated 6.6.1995 for Rs.41,578/-. It was further stated in the complaint that out of the total amount of Rs.87,395.80, the accused paid only an amount of Rs.15,000/- and issued Ext.P2 cheque towards discharge of the balance amount which when presented to the bank for encashment was dishonoured with the endorsement " payment stopped by the drawer". After complying with the statutory provisions regarding notice, reply etc.,

the complaint was filed. To prove the case against the respondent, the complainant was examined as PW.1 and two other witnesses were examined as PWs.2 and 3 and Exts.P1 to P9 were produced. On the side of the defence, DW.1 was examined and Exts.D1 to D5 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction, the accused - first respondent stated that Ext.P2 cheque was issued as security when he had taken the agency of cattle feed from the shop of the appellant and that the transactions mentioned in Ext.P1 and the other bill were cash transactions. According to the first respondent, he did not owe any amount to the appellant as alleged in the complaint. After considering the entire evidence, the trial court found that the appellant failed to prove that Ext.P2 cheque was issued by the first respondent towards discharge of the balance amount and acquitted him. Against the acquittal order, this appeal is filed.

3. This Court heard the learned counsel on either side. The specific case set up by the appellant in the complaint as well as before the court below was that the first respondent had business transactions with the appellant and that Ext.P2 cheque was issued in her favour towards the balance amount payable to her for purchase of cattle feed from her shop.

To prove her case, the appellant relied on Ext.P1 bill. The learned Magistrate found that Ext.P1 was not a credit bill, but a cash bill. Ext.D3 produced by the first respondent is the original of the said bill. Further, the appellant failed to produce the bill dated 6.6.1995. The trial court also found that the appellant had admitted that an agreement was entered into between her and the first respondent at the time of taking the agency for sale of cattle feed. The case set up by the first respondent was that Ext.P2 was a blank cheque issued by him in favour of the appellant as security and not towards discharge of any amount as alleged in the complaint. To prove his case, the first respondent had even examined the husband of the appellant who had admitted before the court below that an agreement was entered into between the appellant and the first respondent. The appellant had not produced the agreement before the court below. Further, the writings in Ext.P2 are in different inks. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires no interference.

The Crl. Appeal is accordingly dismissed, confirming the judgment of the court below.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.31/99

JUDGMENT

30TH MAY, 2007.